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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,937	08/21/2007	Anna Cederholm	EPCL:015US/ 10613209	6786
33425 7590 07/12/2010 FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVE. SUITE 2400 AUSTIN, TX 78701				
EXAMINER				
WEN, SHARON X				
ART UNIT		PAPER NUMBER		
1644				
MAIL DATE		DELIVERY MODE		
07/12/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

***Advisory Action
Before the Filing of an Appeal Brief***

Application No.

10/599,937

Applicant(s)

CEDERHOLM ET AL.

Examiner

SHARON WEN

Art Unit

1644

–THE MAILING DATE of this communication appears on the cover sheet with the correspondence address –

THE REPLY FILED 25 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 112, second paragraph for insufficient antecedent basis.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____
 Claim(s) objected to: _____
 Claim(s) rejected: 3-5 and 10.
 Claim(s) withdrawn from consideration: 1, 6, 8, 9 and 11-13.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Applicant's argument has been fully considered but has not been found convincing for reasons of record. The rejection of record can be located in the previous Office Action, mailed 04/26/2010. Applicant argues that Blankenberg did not teach Annexin V by itself would treat vulnerable plaque. In response to Applicant's argument, it is noted that given the recitation of "comprising" in the instant claims, the treatment of vulnerable plaque is not limited to Annexin V alone but only requires the presence of Annexin V. Therefore, Blankenberg's teaching of Annexin V conjugated to an effector protein to kill stressed cell in patients exhibiting vulnerable plaque (paragraph [0034]) anticipate the instant claims. Applicant's argument on rejection of claims 4 and 10 under 35 USC 103 has been considered. However, claims 4 and 10 were not rejection under 35 USC 103. Therefore, Applicant's argument is not applicable. In response to Applicant's argument that Manzi does not cure the deficiency of Blankenberg because Manzi says nothing about potential role for Annexin V in modulating plaque rupture, it is noted that the purpose of Manzi is to render obvious of using the treatment method taught by Blankenberg for SLE patients because SLE patients often exhibit vulnerable plaques as taught by Manzi. Given that the claims do not limit Annexin V to itself to be used in the treatment, one of ordinary skill in the art would be motivated to use Annexin V conjugated with an effector protein to treat vulnerable plaque in SLE patients. Applicant's argument has not been found convincing to overcome the rejections of record.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Sharon Wen/
Examiner, Art Unit 1644